IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 699/2006
(Anil Vyas Vs. State of Rajasthan & Anr.)

Date of Order : 23/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Shreedhar Purohit for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 26.4.2006 passed by Additional Chief Judicial Magistrate (C.B.I. Cases), Jodhpur, whereby the application filed by the petitioner under Section 73 of the Indian Evidence Act, was dismissed.

I have heard learned counsel for the petitioner.

It is contended by learned counsel for the petitioner that the petitioner issued a cheque in favour of non-petitioner No.2 Jai Kishan Singhal. He has not disputed the signature on the cheque. However, learned counsel submits that there is material alteration in the date mentioned on the cheque. The original date was 04.12.2002 which was altered to 15.11.2004 and such alteration comes in the definition of material alteration.

Learned counsel has also placed on record cheque in question as Annex.1. A bare perusal of the cheque annexed, it appears that it bears the signature of the petitioner as also at the place where the date has been altered. This fact has not been denied that the place where the date 4.12.2002 has been crossed, it bears the signature of the petitioner.

Section 87 of the Act pertains to the effect of material alteration and provides that any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. From a bare reading of the language of Section 87 of the Act, it is clear that if a negotiable instrument is materially altered then it would render the same void unless it is established that the alteration was made with the consent of the signatory to the cheque.

When the issuance of cheque, signature thereon, amount and the name shown in the cheque is admitted by the petitioner, then the burden is entirely on the petitioner defendant to show that cheque was not supported by an consideration. Cheque is an instrument in writing containing unconditional offer signed by the maker directing his specified banker to pay on demand a certain sum of money mentioned therein to the payee or to the other person or drawer of the

instrument. Presumption as to negotiable instrument envisages under Sec.118 of the Act.

Section 118 of the Act reads as under:-

"118. Presumption as to negotiable instruments.- Until the contrary is proved, the following presumptions shall be made-

(a) of consideration.- that every negotiable instrument bearing a date was made or drawn on such date;

(b) as to date.- that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance.- that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d)as to time of transfer.- that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsement.- that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps- that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder of due course.- that the holder of a negotiable instrument is a holder in due course;

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

In the instant case, the cheque given by the

petitioner to the non-petitioner No.2 has not been disputed. Not only this, the petitioner has admitted the person in whose favour the cheque is drawn and amount mentioned therein. The initial burden is on the non-petitioner No.2 to prove that cheque was issued by the petitioner. As soon as the execution of cheque is proved, the Rule of presumption as envisaged under Section 118 of the Act comes into play that the said cheque was supported by consideration, thereafter it is for the cheque issuing parties i.e. the petitioner to show that cheque, though issued is not supported by valid consideration.

In the instant case, the execution of a cheque is admitted, therefore, the presumptions under Sec. 118 of the Act arises, until the contrary is proved. The plea of the petitioner is that the date mentioned on the cheque was inserted by the non-petitioner No.2 by altering the date 4.12.2002. This itself would not amount to material alteration, so as to render the cheque void in view of the fact that the date 4.12.2002 which has been crossed also bears the signature of the present petitioner.

This Court in Sunil Kumar Tyagi Vs. State of Rajasthan and Anr. 2002 (1) R.Cr.D. 377 (Raj.) held as under:-

> "In the instant case, once the execution of a cheque is admitted, presumption under Sec.118 of the Act arises, until the contrary is proved. Only case of the petitioner is that the date mentioned on the cheque was inserted by the non-petitioner No.2. This itself would not amount to material alteration so as to render the cheque void."

In P.S.A. Thamotharan Vs. Dalmia Cement (B) Ltd., 2005 (2) All India Criminal Law Reporter, 276, Madras High Court held as under :-

> "Cheque does contain the signature of the petitioner, thereby admitting that the cheque leaf belongs to the petitioner, and he had subscribed his signature in the cheque. The only contention appears to be that the body of the cheque was not written by the petitioner/accused. To have validity for the Negotiable Instruments, such as cheque, it is not mandatory and no law prescribes that the body of the cheque should also be written by the signatory to the cheque. A cheque could be filled up by anybody and if it is signed by the account holder of the cheque, accepting the amount mentioned therein. In this case, the signature of the cheque Ex.P-2 is admitted by the petitioner. Thereafter, by comparing the handwritings, namely the body of the cheque as well as admitted handwriting of the petitioner, it is not going to tilt the balance of the case in anybody's favour."

In the circumstances therefore, in my view, no case for interference is made out. The petition is therefore, dismissed.

(H.R.PANWAR),J.

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